

John M. Lovett

v.

Town of Sutton

Docket No.: 15100-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$71,900 (land \$37,800; current use \$1,400; buildings \$32,700) on a 27.80-acre lot (27.29 acres in current use; .51 acres not in current use) (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Town has assessed a 104 foot x 117 foot lot not in current use (NICU) as if it were on the lake front; however it is located over 100 feet back from the lake;
- (2) the figured frontage on the assessment record card should be deleted and the land NICU should be assessed as back land with a value of \$1300.50; and

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(3) because the land NICU had been assessed as part of the rear land under the ad valorem assessment, the site should continue to be assessed as rear land only.

The Town argued the assessment was proper because:

(1) the 104 foot x 117 foot area NICU was assessed as a homesite with the base value of being on the lake but an additional 50% discount was given to recognize the site sets back from the lake; and

(2) the site has the amenity of being associated with the lake; the site has a screened view through the trees to the lake.

Facts

The Property consists of a total of 27.8 acres of land fronting on Lake Blaisdell. In 1994, 27.29 acres were enrolled in current use under RSA chapter 79-A, and the balance of .51 acres around the camp and shed, not qualifying for current use, were assessed at ad valorem pursuant to RSA 75:1. The approximately half an acre NICU is situated over 100 feet back from the shore of Lake Blaisdell and did not include any shore frontage.

The Taxpayer argued that the site should be valued based on rear land calculations determined during the 1992 reassessment because the site is located more than 100 feet back from the shoreline. The Town assessed approximately half the site using a price based on lake frontage but applying an additional 50% adjustment due to its location back from the lakefront. The balance of the half acre (.232 acres) was assessed as good rear land.

Board's Rulings

Based on the evidence, we find the Taxpayer did not carry his burden in showing that the ad valorem value of the land NICU was excessive or disproportionate.

The board has ruled on similar facts in Arnold v. Town of Francestown, Docket Nos.: 8718-90PT/11152-91PT/13819-93PT and in Virginia A. Soule v. Town of Sunapee, Docket No.: 14773-93PT. As in those cases, the sole issue before the board is what is the proper ad valorem value for the portion of the land not in current use and what factors should be considered in arriving at its proper value. The .51 acre must be assessed at market value as defined in RSA 75:1 considering all factors that affect market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The bases for such a task is contained in both the statutes and the principles of appraising.

In valuing property, all real estate rights are assessed.
RSA 21:21 Land; Real Estate. I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.

While they vary from property to property, these ownership rights are often viewed as a "bundle of rights." "Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest." Appraisal Institute, The Appraisal of Real Estate 10th Edition, 6 (1992). When appraising a property that has no restrictions

of rights (beyond being subject to taxation, eminent domain, police power and escheat), these rights are normally viewed collectively (as a bundle) and valued after a highest and best use analysis of the entire property.

The highest and best use must be one that is legally permissible, physically possible, and financially feasible. In most properties there are many factors that influence value and contribute to the determination of the highest and best use. Such factors are nearly endless but commonly include influences, both internal and external, to the property such as location, size, utility, access, improvements, topography, view, and zoning. In valuing an unrestricted property, the effect of various value influencing factors are normally viewed collectively. However, in reality, such factors are rarely distributed evenly throughout the property. Some portions of a property may embody certain factors more than other portions. For example, the area of a lot that contains improvements is more valuable than unimproved areas, and the location on a lot from which a view is obtained is generally more valuable than obscured locations.

However, when a property is subject to current-use assessment, certain rights and value influencing factors are temporarily veiled and not valued for taxation purposes. N.H. CONST. pt. II, art. 5-B; RSA 75:1; chap. 79-A. These rights and factors still exist and are held by the owner, but they are suppressed or restricted by current use for tax purposes until sometime in the future when the land that embodies those rights or value influencing factors no longer qualifies for current use and is then assessed at market value.

assessment and should be valued at its highest and best use considering the rights and factors directly inherent in the land NICU.

Consequently, it is important when trying to value land NICU to not become overly technical or focused solely on the physical attributes of the land. Rather, the challenge is to value the real estate rights the physical land embodies. In this case the Taxpayer's .51 acre NICU has the right to continue to have a cottage and storage shed on it, has the right of viewing the lake and has the right to access the waterfront across the current-use land. The board finds these rights of enjoyment are reasonably reflected in the Town's site value. While the site value begins with a value based on waterfront, the Town reduced it 50% to reflect the distance of the site from the lakefront. The board finds that to value the site strictly as rear land would not capture those rights the Taxpayer continues to enjoy in conjunction with the .51 acre site. Similarly the Taxpayer's argument of attempting to value the site by the difference in the Town's depth adjustment factors would not adequately capture all the buildings and water access rights the site has. The board understands the Taxpayer's attempt to use the technical methodology used by the Town in arriving at the ad valorem value of the Property prior to current-use assessment. However, as the board has stated, the appraisal exercise should be viewed less technically and more from the viewpoint of valuing the rights remaining in the land NICU.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3;

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TAX 201.37. The rehearing motion must state with specificity all of the reasons

supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John M. Lovett, Taxpayer; and Chairman, Selectmen of Sutton.

Date: September 16, 1996

Valerie B. Lanigan, Clerk

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